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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

JUN 05 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues through counsel that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

Specific supporting evidence must accompany the petition to document the “sustained national or international acclaim” that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a “one-time achievement (that is, a major, international recognized award).” *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria

at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

This petition, filed on April 11, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. The petitioner initially submitted news articles, award certificates, letters of recommendation, and concert programs. In response to a Request for Evidence ("RFE") dated February 13, 2008, the petitioner submitted information about her awards and additional music programs. We address the evidence submitted and the petitioner's contentions in the following discussion of the regulatory criteria relevant to her case.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria. The petitioner does not claim eligibility under any criteria not addressed below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On appeal, counsel states that the petitioner's performance in the Jaén International piano competition, the Marie Canals music competition, and the Arthur Rubinstein piano master competition qualifies her under this criterion. The petitioner submitted evidence of her first place victory in the 2006 Jaén Prize Piano Competition, first place in the 2003 Maria Canals International Piano Competition, and her invitation to participate in the 2008 Arthur Rubenstein International Piano Master Competition. The Arthur Rubenstein competition cannot be considered as it occurred after the date that this petition was filed. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Information about the Jaén competition, provided by Wikipedia states that the competition is "the most important Piano Competition [sic] in Spain." With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.¹

¹ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

The information provided by the Jaén Competition website states that the competition is limited to pianists under 32 years of age who have not previously won the Jaén Competition. The information provided from the Maria Canals Competition website states that the prize is awarded every two years. A March 19, 2008 letter from [REDACTED] states that the Maria Canals competition is “one of the most important piano competitions in the world” and that previous winners “have continued their already acclaimed career touring the world.” The letter from Uriel Tsachor states that the Maria Canals Competition is “a major international competition.” The letter from [REDACTED] states that the Jaén competition and the Maria Canals competition are “some of the classical community’s greatest international competitions.” [REDACTED] further stated that the Maria Canals competition “is one the Europe’s most prestigious musical events that features only the most skilled and awe-inspiring musicians.” The letter from [REDACTED] states that the Jaén competition and the Maria Canals competition are “esteemed international competitions.” Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)). Beyond the assertions of the writers, the petitioner has failed to provide evidence establishing the nature of these competitions or that winning any one of the competitions equates to the receipt of a lesser nationally or internationally recognized prize or award.

The petitioner also supplied a March 6, 1989 article titled “Competitions That Crown International Stars” from *The New York Times*, which lists the Arthur Rubenstein International Piano Master Competition among eight “major piano competitions [sic] held around the world.” On appeal, counsel states that since *The New York Times* article states that the top competitions all have age limits, the competitions in which the petitioner participated should be given more weight than that afforded by the Director. While we accept that some competitions that are limited by age may qualify an alien under this criterion, evidence must be presented to show that a limited competition amounts to a nationally or internationally recognized prize or award for excellence in the field. In this case, the petitioner presented no evidence that she won any of those eight competitions. In addition, the petitioner did not provide evidence that either the Jaén competition or the Maria Canals competition falls into the same category as the eight competitions specified in *The New York Times* article. She also fails to show how these awards constitute awards for excellence in the field if they did not allow all performers working in the field to compete regardless of age or experience.

In addition to the above listed competitions, the petitioner submitted evidence of her receipt of third place in the 2001 Ariana Katz music competition, first place in the 2001 Paul Ben Haim competition, third place in the 2001 Israeli Academy of Music competition, sixth place in the 2004 International Piano e-competition, second place in the 2004 Da Cidade do Porto Competition, fourth place, in the 2004 1st Panama International Piano Competitions, second place in the 2005 International Piano Competition Cidade de Ferrol, best interpretation of Spanish Music prize in the 2006 VII International Piano Competition Spanish Composers, and special prize to the best competitor who did not receive other prizes in the 2006 International Piano Competition Alessandro Casagrande. The petitioner also presented evidence of her participation in the 2005 Hong Kong International Piano Competition. The information provided from the Competition Alessandro Casagrande website states that the award is given every two years to “young candidates.” The information

submitted about the e-competition states that its purpose “is to bring young artists, with the promise of lasting . . . careers, to the public’s attention.” The information about the Hong Kong competition indicates that it views itself as a “prize winners’ competition” in that it “attract[s] a large number of first prize winners from other major international piano competitions.” Like the awards singled out by counsel, the petitioner failed to submit information as to how these awards constitute awards for excellence in the field. In addition, even in those competitions that were not defined by the age of the competitors, the petitioner presented no evidence to show that winning or placing in any of these competitions conveys national or international acclaim.

In light of the above, the petitioner has not established that she meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted the following articles primarily about her: “[The Petitioner] Wins the Jaén Prize in a landslide,” published in *Diario Jaen* on April 29, 2006; “Israeli [The Petitioner] wins the Maria Canals piano competition,” published in *El Pais* on March 25, 2003; an untitled piece appearing in the June 19, 2006 *Variaciones*; and “[The Petitioner] wins the ‘Premio Jaen,’” published in the April 24, 2006 *Ideal*. The petitioner submitted no information about these publications to indicate that they are professional or major trade publications or other major media. Instead, the name of *Diario Jaen* indicates that it serves a particular locality.

The petitioner submitted other articles that mentioned her but were not primarily about her: “Competition Winners,” published in July/August 2003 *Piano*; “48th ‘Jaén Prize’ International Piano Competition The List of the Pianists,” published in the June 2006 *Ritmo*; “The Economic Society Selects the Jaén Prize winner,” published in the October 2006 *Diario Jaen*; “Performers from five countries take part at the ‘Young Pianists’ Festival,” published in the June 27, 2003 *La Provincia*; “The Auditorium receives a ‘Romantic’ Festival of Young Pianists,” published in the June 27, 2003 *La Gaceta*; “Eight performers participate at the ‘Young Pianists’ Festival,” published in the June 14, 2003 *Canarias*; “Piano-e-Competition Crowns Second Winner,” published in the Summer 2004 *Accent*; “Young pianists from Korea, Israel, China, Russia and Japan will perform at the 13th to 20th of June in this first edition,” published in the June 2006 *Melomano*. For example, the article in *Piano* lists three different pianists who won competitions and the article in *Ritmo* reports on the competition as a whole. In any case, no information was submitted about any of these

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

publications to show that they constitute professional or major trade publications or other major media. On appeal, counsel states that these two publications are professional publications, however, no evidence was submitted to support this assertion such as circulation statistics. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In light of the above, the petitioner did not establish that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Although we would normally consider the numerous letters of recommendation under this criterion, counsel instructs us to consider them instead as comparable evidence since "concert pianists do not make original artistic contributions of major significance to the field of music since they generally play works of composers, most of whom have been deceased for over 100 years. They are more concerned with playing the pieces perfectly and interpreting the music to bring out the best in the composition." Accordingly, we will not discuss the letters under this criterion, for which the petitioner has not demonstrated eligibility.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claimed eligibility under this criterion by virtue of her numerous performances including, but not limited to, the competitions discussed under 8 C.F.R. § 204.3(h)(3)(i). This criterion relates to visual artists, such as sculptors and painters. Regardless, frequent performances are intrinsic to the music profession. Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. In the performing arts, national or international acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial national or international audience. The record includes no evidence showing that the petitioner has attracted such a following. The regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner failed to show that she was either the main attraction at any of the exhibitions or showcases or her participation was otherwise indicative of sustained national or international acclaim.

In light of the above, the petitioner has not established that she meets this criterion.

On appeal, counsel states that we should consider the letters of recommendation under the comparable evidence provisions. He reasons that this would be appropriate as "at least three of the recognized categories of proof have no applicability to the petitioner's field of endeavor." The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence," but only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel has already argued in this proceeding that the petitioner meets three of the ten criteria at 8 C.F.R. § 204.5(h)(3).

The evidence of record indicates that additional regulatory criteria can be applied to petitioner's field, including 8 C.F.R. §§ 204.5(h)(3)(iv), (viii), (ix), and (x). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, counsel argues that the petitioner's letters of recommendation should have been considered as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). There is no evidence showing that this documentation constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. While recommendation letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Although the letters submitted speak highly of the petitioner's abilities as a pianist, primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.